

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1316

Docket No.

B
P/S

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

v.

MICHAEL PROCAK,

)
Appellant

)
Appellee

UNITED STATES OF AMERICA,

v.

SAMUEL DONALD KNIGHT,
a/k/a Michael Procak,
a/k/a Donald C. Parker,

)
Appellant

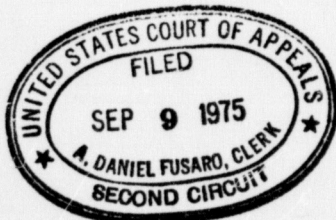
)
Appellee

Appeal from the United States District
Court for the District of Vermont

APPENDIX FOR THE UNITED STATES

GEORGE W. F. COOK
United States Attorney

WILLIAM B. GRAY
JEROME F. O'NEILL
Assistant U. S. Attorneys



PAGINATION AS IN ORIGINAL COPY

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COFFRIN

[illegible][illegible]

DATE	PROCEEDINGS	
1972		
Nov. 30	Filed Magistrate's Complaint for violation of T18, Sec. 545, USC, and Order Specifying Methods and Conditions of Release.	1
Dec. 7	" Indictment for violation of T18, Sec. 545, USC.	2.
" "	" Record of Grand Jury Concurring.	
1973		
Jan. 22	Issued Summons returnable 1-29-73 at Burlington.	
Feb. 8	Issued Bench Warrant and delivered same to Marshal for service.	
" 20	Filed Summons returned unserved.	3.
1974		
Dec. 10	Filed Bench Warrant returned served.	4.
" "	See entries in Cr. 74-101.	
" 16	Filed appointment of Barry E. Griffith, Esq. for Def. Counsel In Court before Judge Coffrin. Jerome F. O'Niell, Esq. for Govt.; Barry E. Griffith, Esq. for Deft. Deft. present in Court with his attorney for Arraignment.	
" "	Court makes inquiries of Deft. before plea.	
" "	Deft. was arraigned by Clerk and pled not guilty.	
" "	ORDERED: That a plea of not guilty be accepted by the Court.	1
" "	Mr. Griffith moves for a reduction of bail as set in Cr. 74-101;	

DATE	PROCEEDINGS	
1974		
Dec. 16	objected to by Mr. O'Neill.	
" "	ORDERED: That bail be continued in the sum of \$25,000.	
" "	Deft. moves for a change of venue.	
" "	ORDERED: Motion denied. All motions to be filed by 12-30-74.	
" 31	Filed Defendant's motion for discovery and Memorandum.	5
" "	" " " to suppress evidence and Memorandum.	6
" "	" " " dismiss (Double Jeopardy) & Memorandum.	7
" "	" " " (Speedy Trial). " "	8
" "	" " " (Government Promise) & " "	9
" "	" " " for Taking of Deposition & Memorandum.	10
" "	" " " a Change of Venue. " "	11
" "	" " " Review of Bail & Memorandum.	12
" "	" Certificate of Service.	13
1975		
Jan. 20	Govt.'s Response to Motion for Discovery and Memorandum of Points and Authorities.	14
" "	Govt's Opposition to Motion to Suppress evidence and Memorandum of Points and Authorities.	15
" "	Govt's Opposition to Motion to Dismiss and Memorandum of Points and Authorities.	16
" "	Govt's Opposition to Motion to Dismiss (Speedy Trial) and Memorandum of Points and Authorities.	17
" "	Govt's Opposition to Motion to Dismiss (Govt promise) and Memorandum of Points and Authorities.	18
" "	Govt's Opposition for Change of Venue.	19
" "	Govt's Opposition to Motion for Taking of Deposition.	20
" "	In Court before Judge Coffrin. Jerome F. O'Neill, Esq. for Govt.; Barry E. Griffith, Esq. for Deft.	
" "	Hearing on Deft's Motion for Discovery.	
" "	Statements made to Court by Mr. Griffith who states that requested items will be furnished by Govt.	
" "	Ordered: Motion denied.	
" "	Hearing on Deft's Motion to Suppress Evidence.	
" "	Statements made to Court by Mr. Griffith; followed by Mr. O'Neill.	
" "	Ordered: Motion denied.	
" "	Hearing on Deft's Motion to Dismiss (double jeopardy).	
" "	Statements made to Court by Mr. Griffith and states that proceedings will proceed in Cr. 74-100; consented to by Mr. O'Neill.	
" "	Ordered: Motion dismissed	
" "	Hearing on Deft's Motion to Dismiss (speedy trial).	
" "	Statements made to Court by Mr. Griffith; followed by Mr. O'Neill.	
" "	Samuel Donald Knight, sworn by Clerk, was examined by Mr. Griffith for Deft.; cross-examined by Mr. O'Neill; re-examined by Mr. Griffith; re-cross-examined by Mr. O'Neill.	
" "	Neil L. Lageman, sworn by Clerk, was examined by Mr. O'Neill; cross-examined by Mr. Griffith; re-examined by Mr. O'Neill.	
" "	Taken under advisement.	
" "	A summary of Deft's position in this motion was stated to the Court by Mr. Griffith.	
" "	Statements made to Court by Mr. O'Neill who requests that motion be denied.	
" "	Hearing on Deft's Motion to Dismiss (Govt. promise).	
" "	Statements made to Court by Mr. Griffith; followed by Mr. O'Neill.	

DATE	PROCEEDINGS
1975	
Jan. 20	Ordered: Motion denied.
" "	Hearing on Deft's Motion for Change of Venue.
" "	Statements made to Court by Mr. Griffith; objected to by Mr. O'Neill.
" "	Ordered: Motion denied.
" "	Hearing on Deft's Motion for Taking Deposition.
" "	Statements made to Court by Mr. Griffith.
" "	Ordered: Motion denied with leave to refile.
" "	Hearing on Deft's Motion for Review of Bail.
" "	Statements made to Court by Mr. Griffith who requests that bail be amended; objected to by Mr. O'Neill.
" "	Ordered: Motion denied. Bail continued as presently set.
" "	Mr. Griffith requests that a pre-sentence investigation be made prior to trial.
" "	Court states that Mr. Griffith should contact probation officer.
" 23	Filed Deft's Supplementary Memorandum of Law on his Motion to Dismiss (Speedy Trial). 21.
Feb. 11	Filed Opinion and Order--Defendant's Motion to Dismiss Indictment for lack of a speedy trial and/or violation of the Plan or Rules for Prompt Disposition of Criminal Cases is denied. 22.
Apr. 15	Deft's Motion for review of bail & Memorandum. 23.
" 16	In open Court before Judge Holden, David A. Reed, Esq., Asst. U. S. Attorney, for Government. William K. Sessions, III, Esq. for defendant.
" "	Hearing on defendant's motion for a reduction of bail.
" "	Filed Waiver of defendant's presence. 24.
" "	Statements made to Court by Mr. Sessions in support of his motion who requests that defendant be released on his own recognizance, objected to by Mr. Reed who requests that bail be continued.
" "	Court makes inquiry of Mr. Sessions and Mr. Reed.
" "	Taken under consideration.
" 21	Filed Memorandum and Order -- deft's. motion for reduction of bail is denied. Mailed copy to attys. 25.
May 1	Refer to entries in Cr. 74-101
" 15	In Court before Judge Coffrin. Jerome R. O'Neill, Esq. for Govt.; William K. Sessions, III and Barry E. Griffith, Esqs. for Deft. Deft. present in Court with his attorneys.
" "	Hearing on Deft's request for reduction of bail.
" "	Mr. Griffith moves that Deft. be released on personal recognizance; objected to by Mr. O'Neill.
" "	Mr. O'Neill moves that bail be set at \$25,000.
" "	Court makes inquiries of Deft.
" "	ORDERED: Cash bail fixed in the sum of \$5,000. Court request that Mr. Sessions explore the possibility of Deft. posting bail. Mr. Sessions is to return to Court to determine if bail will be posted or if some other provision can be made.
" "	Deft. remanded to custody of U.S. Marshal for lack of bail.
May 19	Filed defendant's motion for review of bail. 26.
" "	In Court before Judge Coffrin. David Reed, Esq. for Govt; William Sessions, III, Esq. for Deft. Deft. present in Court with his attorney.
" "	Hearing on Deft's Motion for Review of Bail.
" "	Statements made to Court by Mr. Sessions; followed by Mr. Reed.
" "	ORDERED: Bail continued in the sum of \$5,000; Deft. released to the custody of Bridge, Inc. A condition of bail is that Deft. remain within the State of Vermont.

DATE 1975	PROCEEDINGS	
May 19	Filed Order specifying methods and conditions of Release.	27.
" 27	Filed defendant's motion to revise and amend.	28.
June 16	" Government's Response to Motion to Revise & Amend.	29.
" "	In Court before Judge Coffrin. Jerome O'Neill, Esq. for Govt;	
" "	William K. Sessions, Esq. for Deft. Deft. present in Court	
" "	with his attorney.	
" "	Hearing on Deft's Motion to Revise and Amend.	
" "	Statements made to Court by Mr. Sessions; followed by Mr. O'Neill.	
" "	Based on the total evidence presented to the Court, it is	
" "	ORDERED: Motion granted. Case is dismissed with prejudice in	
	Cr. 6870 and 74-100. Deft. to keep in touch with Mr. Sessions	
	and bail is continued. Deft. is qualified to travel without	
	any restrictions.	
" 19	Filed Opinion and Order. --CASE DISMISSED. Copy mailed to attys.	30.
July 16	Filed Motion for Reconsideration and Hearing.	31.
" 24	Filed Authorization to incur expenses of transcript.	32.
Aug. 4	In open Court before Judge Coffrin, hearing on Government's motion	
	for reconsideration and rehearing. Jerome O'Neill, Esq. for	
	Government; William K. Sessions, III, Esq. for defendant.	
" "	Ordered: Motion denied.	

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

Cr. 740101 **COFFRIN**

D. C. Form No. 100 Rev. See Cr. 6870 & 74-100

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
us.	U. S. Attorney
SAMUEL DONALD KNIGHT, a/k/a Michael Procak, a/k/a Donald C. Parker	
	For Defendant:
	Barry E. Griffith, Esq. APT 98 Merchants Row Rutland, VT 05701
	William K. Sessions, III, Esq. 20 So. Pleasant Street Middlebury, VT 05753

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed DEC 5 1974	Clerk				
J.S. 3 mailed JUN 5 1975	Marshal				
Violation	Docket fee				
Title 18					
Sec. 3150					

DATE	PROCEEDINGS
1974	
Nov. 14	Filed Indictment for violation of Section 3150, Title 18, United States Code. 1.
" "	" Record of Grand Jurors concurring.
" "	Issued Warrant for Arrest of Deft.
Dec. 6	Filed Warrant for Arrest of Defendant Knight returned served. 2.
" 10	In Court before Judge Holden. Jerome O'Neill, Esq. for Govt.; Barry Griffith, Esq. for Deft. Deft. present in Court with his attorney for Bail hearing.
" "	Filed Appointment of Barry Griffith, Esq. for Deft. 3.
" "	Court advised the Deft. of his rights and appointment of counsel.
" "	A plea of not guilty was entered by the Court.
" "	Mr. O'Neill moved that bail be fixed at \$25,000, and that Deft. be restricted to State of Vermont; objected to by Mr. Griffith.
" "	Deft. made statements to Court regarding his failure to appear on January 29, 1974.
" "	ORDERED: That bail be fixed at \$25,000 and matter be continued until 12-16-74 in Burlington.
" "	Mr. Griffith moved that Deft. receive medical attention; consented to by Mr. O'Neill.
" "	ORDERED: That U.S. Marshal arrange for medical needs of Deft. 5

6

Cr. 74-101 U.S.A. v. Knight

DATE 1975	PROCEEDINGS
May 1	ORDERED: Motion denied.
" "	Filed Memorandum of Pretrial Conference. Copy mailed to U.S.
" "	Attorney and Counsel for deft. 9.
" 2	Filed Order -- defendant's motion for the taking of the deposition of Sergeant Len Rozmus, Royal Canadian Mounted Police, be and the same hereby is granted; said deposition to be taken at the expense of the U. S. Government in Toronto, Ontario, Canada, at the earliest practicable date hereafter. Copy mailed to attys. 10.
" 12	Deft's Request for Continuance. 11.
" 13	Filed Government's request to charge and trial memorandum. 12.
" "	Trial by Jury begun before Judge Coffrin. Jerome O'Neill, Ass't. U.S. Attorney for Government, Barry E. Griffith, Esq. and William K. Sessions, III, Esq. for defendant.
" "	At Bench Counsel and defendant present. Mr. Sessions moves that all witnesses be excused from Courtroom before testifying.
" "	ORDERED: Motion granted.
" "	In Chambers - Counsel and defendant present. Mr. Sessions requests that trial be closed to the public; objected to by Mr. O'Neill.
" "	ORDERED: Motion overruled.
" "	In Court - jury present.
" "	At Bench - counsel and defendant present. Mr. Sessions moves for change of venue.
" "	ORDERED: Motion denied.
" "	At 3:05 PM a Jury was impaneled by the Clerk.
" "	ORDERED: that one alternate juror be impaneled by the Clerk
" "	The Oath to petit jurors in criminal cases was administered by the Clerk.
" "	The following witnesses sworn by Clerk were examined for Govt.: George Robert Klinefelter and Neil Lagge man .
" "	In Chambers - Counsel and deft. present. Mr. Sessions moves to have the Jury sequestered.
" "	ORDERED: Motion denied.
" 14	Filed defendant's request to charge. 13.
" "	Trial resumed.
" "	Neil Lagge man was recalled and cross examined for deft.
" "	The following witnesses sworn by Clerk were examined for Government: Sidney Bowers, James B. Fuller, John Dooley, Edward J. Trudell and Daniel Ferrand Pursglove.
" "	In Chambers Counsel and deft. present. Mr. Sessions moves for a dismissal. Objected to by Mr. O'Neill.
" "	ORDERED: Motion denied.
" "	In Court - Jury present - trial resumed.
" "	At 1:45 pm Government rests.
" "	The deposition of Leonard John Rozmus was read to the jury for deft. Samuel Donald Knight, sworn by Clerk was examined for deft.
" "	At 4:15 pm defendant rests.
" 15	In Chambers- Counsel and deft. present. A discussion was had between Court and Counsel as to witnesses who will be testifying in rebuttal for govt.
" "	Trial resumed.
" "	Neil Lagge man was recalled in rebuttal and further examined for Govt.
" "	Michael Procak, sworn by Clerk was examined for Govt.
" "	Parts of transcript of Jan. 20, 1975 proceedings was read to Jury

DATE
1975

PROCEEDINGS

		by Mr. O'Neill for Govt.	
May	15	At 10:15 Government rests in rebuttal, Deft. rests.	
"	"	At Bench - Attorneys and deft. present. Mr. Sessions moves that case be dismissed. Objected to by Mr. O'Neill.	
"	"	ORDERED: Motion denied.	
"	"	Opening arguments were made to the jury by Mr. O'Neill followed by Mr. Sessions. Closing arguments made by Mr. O'Neill.	
"	"	ORDERED: that Mrs. Alberta M. Lauzon be appointed forelady of the jury.	
"	"	At 11:25 the Court began his charge to the jury, concluding at 11:40 am	
"	"	Christian Hansen, Jr. and Marlene Jolley were sworn by the Clerk as officers in charge of Jury. and Miro Kabat	
"	"	Alternate Juror Bressette was excused by by the Court.	
"	"	At 11:45 am the jury retires to consider its verdict.	
"	"	At 3:05 pm the Jury come into Court for further instructions, after receiving same, they again retired to consider its verdict at 3:10pm.	
"	"	At 5:25 P.M., the jury come into Court and find the Deft. not guilty as charged.	
"	"	Filed Judgment Order--Judgment entered on jury verdict, Deft. not guilty as charged. Mailed copy to attorneys.	14.
"	22	Filed Government's Subpoena to Testify returned served.	15.

Cr. 74-100

COFFRINI

See: Cr.6870 & 74-101

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	<i>For U.S.:</i>
vs.	U. S. Attorney
SAMUEL DONALD KNIGHT, a/k/a Michael Procak, a/k/a Donald C. Parker	
	<i>For Defendant:</i>
	Barry E. Griffith, Esq. (AP 98 Merchants Row Rutland, VT 05701
	William K. Sessions, III, Esq. 20 So. Pleasant Street Middlebury, VT 05753

STATISTICAL RECORD		COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed DEC 5 1974	Clerk						
J.S. 3 mailed JUL 3 1975	Marshal						
Violation	Docket fee						
Title 18 and 21							
Sec. 545; 812, 841, 952 and 960 respc.							

<u>DATE</u>	<u>PROCEEDINGS</u>	
Nov. 14	Filed Indictment for violation of Section 545, Title 18, and Sections 812, 841, 952 and 960, Title 21, U. S. C.	1.
" "	" Record of Grand Jurors concurring.	
Dec. 10	See entries in Cr. 74-101.	
" 12	XXX XXXXXXXXXXXXXXXXXXXX	
" 16	In Court before Judge Coffrin. Jerome F. O'Neill, Esq. for Govt.; Barry E. Griffith, Esq. for Deft. Def't. present in Court with his attorney for Arraignment.	
" "	Deft. waives reading of Indictment, was arraigned by the Court and pled not guilty as to Counts I, II & III.	
" "	ORDERED: That a plea of not guilty be accepted by the Court.	
" "	Mr. Griffith moves for a reduction of bail as set in Cr. 74-101; objected to by Mr. O'Neill.	
" "	ORDERED: That bail be continued in the sum of \$25,000.	
" "	Deft. moves for a change of venue.	
" 31	ORDERED: Motion denied. All Motions to be filed by 12-30-74. See entries made in Cr. 6870.	
1975 Jan. 20	See entries made in Cr. 6370.	9

Cr. 74-100 U.S.A. vs. Samuel Donald Knight a/k/a etc.

DATE 1975	PROCEEDINGS	
Jan. 23	See paper No. 21, Cr. 6870.	
" 28	Filed Government's Notice of Readiness.	2.
" 29	" Government's Response to Deft's Supplementary Memorandum of Law on his Motion to Dismiss (Speedy Trial).	3.
Feb. 11	" Deft's Motion for Continuance.	4.
" "	" Opinion and Order--Defendant's Motion to Dismiss Indictment for lack of a speedy trial and/or violation of the Plan or Rules for Prompt Disposition of Criminal Cases is denied.	5.
" 21	Filed Stipulation--that this matter not be brought on for trial before at least April 20, 1975.	6.
Feb. 21	Filed Order -- this matter is continued until a date subsequent to April 20, 1975; it is now specially assigned for trial to commence in Burlington at 9:30 AM, on 5/6/75. Copy mailed to attys.	7.
Apr. 10	Filed Notice of Appearance of William K. Sessions, III, Esq. as co-counsel for Deft.	8.
" 15	" Deft's Motion for review of bail. (See Cr. 6870)	
" 16	See entries made in Cr. 6870.	
" 21	Filed Memorandum & Order -- deft's motion for reduction of bail is denied. Mailed copy to attys. (See Cr. 6870)	9.
" 30	Filed Defendant's Motion for Pre-Trial Conference.	10.
" "	Filed Defendant's Memorandum of Law.	
May 1	Refer to entries in Cr. 74-101	
" 15	In Court before Judge Coffrin. Jerome F.O'Neill, Esq. for Govt.; William K. Sessions, III and Barry E. Griffith, Esqs. for Deft. Deft. present in Court with his attorneys.	
" "	Hearing on Deft's request for reduction of bail.	
" "	Mr. Griffith moves that Deft. be released on personal recognizance; objected to by Mr. O'Neill.	
" "	Mr. O'Neill moves that bail be set at \$25,000.	
" "	Court makes inquiries of Deft.	
" "	ORDERED: Cash bail fixed in the sum of \$5,000. Court requests that Mr. Sessions explore the possibility of Deft. posting bail. Mr. Sessions is to return to Court to determine if bail will be posted or if some other provision can be made.	
" "	Deft. remanded to custody of U.S. Marshal for lack of bail.	
May 19	Filed defendant's motion for review of bail. (see Cr. 6870)	
" "	In Court before Judge Coffrin. David Reed, Esq. for Govt.; William Sessions, III, Esq. for Deft. Deft. present in Court with his attorney.	
" "	Hearing on Deft's Motion to Review of Bail.	
" "	Statements made to Court by Mr. Sessions; followed by Mr. Reed.	
" "	ORDERED: Bail continued in the sum of \$5,000; Deft. released to the custody of Bridge, Inc. A condition of bail is that Deft. remain within the State of Vermont.	
" "	Filed Order specifying methods and conditions of release.(see Cr. 6870)	
" 27	Filed defendant's motion to revise and amend. (see Cr. 6870)	
June 16	" Government's Response to Motion to Revise & Amend. (See Cr. 6870)	
" "	In Court before Judge Coffrin. Jerome F. O'Neill, Esq. for Govt.; William K. Sessions, Esq. for Deft. Deft. present in Court with his attorney.	
" "	Hearing on Deft's Motion to Revise and Amend.	
" "	Statements made to Court by Mr. Sessions; followed by Mr. O'Neill.	
" "	Based on the total evidence presented to the Court, it is	

Cr. 74-100, U.S. vs. Samuel Donald Knight a/k/a etc.

DATE 1975	PROCEEDINGS
June 16	ORDERED: Motion granted. Case is dismissed with prejudice in Cr. 6870 and 74-100. Deft. to keep in touch with Mr. Sessions and bail is continued. Deft. is qualified to travel without any restrictions.
" 19	Filed Opinion and Order. -X CASE DISMISSED. Copy mailed to attys. (see Cr. 6870)
July 16	Filed Motion for Reconsideration and Rehearing. (See Cr. 6870).
Aug. 4	In open Court before Judge Coffrin, hearing on Government's motion for reconsideration and rehearing.
" "	Ordered: Motion denied. Jerome O'Neill, Esq. for Government; William K. Sessions, III, Esq. for defendant.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

MICHAEL PROCAK

CR. No. 6870

Section 545, Title 18
United States Code

COUNT I

The Grand Jury charges:

On or about the 29th day of November, 1972, at or near St. Albans, in the State and Judicial District of Vermont, MICHAEL PROCAK knowingly and wilfully and with intent to defraud the United States, did smuggle and clandestinely introduce into the United States merchandise, to wit, approximately 2,000 capsules of methaqualone, which should have been invoiced; in violation of Section 545, Title 18, United States Code.

A TRUE BILL

Charles H. [Signature]
Foreman

GEORGE W. F. COOK
United States Attorney

By

Norman Cohen
NORMAN COHEN
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

SAMUEL DONALD KNIGHT, a/k/a
Michael Procak, a/k/a Donald
C. Parker

CRIMINAL NO. 74-100

18 U.S.C. §545

21 U.S.C. §§812, 841,
952, 960

COUNT I

The Grand Jury charges:

On or about the 29th day of November, 1972, in the District of Vermont, SAMUEL DONALD KNIGHT, a/k/a Michael Procak, a/k/a Donald C. Parker, the defendant, knowingly and willfully and with intent to defraud the United States, did smuggle and clandestinely import into the United States merchandise which should have been invoiced, to wit, approximately 2000 capsules of methaqualone; in violation of §545 of Title 18, United States Code.

COUNT II

The Grand Jury further charges:

On or about the 29th day of November, 1972, in the District of Vermont, SAMUEL DONALD KNIGHT, a/k/a Michael Procak, a/k/a Donald C. Parker, the defendant, unlawfully, willfully and knowingly did import into the United States from a place outside thereof a quantity of methamphetamine, a Schedule II controlled substance; in violation of Sections 812, 952 and 960 of Title 21, United States Code.

COUNT III

The Grand Jury further charges:

On or about the 29th day of November, 1972, in the District of Vermont, SAMUEL DONALD KNIGHT, a/k/a Michael Procak, a/k/a Donald C. Parker, the defendant, unlawfully, willfully and knowingly did possess with intent to distribute a quantity of methamphetamine, a Schedule II controlled substance; in violation of Section 841 of Title 21, United States Code.

A TRUE BILL

John H. Fuller

Foreman

GEORGE W. F. COOK
UNITED STATES ATTORNEY

By

Jerome F. O'Neill

JEROME F. O'NEILL
ASSISTANT U. S. ATTORNEY

November 14, 1974



NEW YORK STATE DRIVER LICENSE		SIGNATURE OF DRIVER <i>Michael Prock</i>	
CHAUFFEUR	DATE OF BIRTH 1/23/43	SEX M	FILE 3.00
IDENTIFICATION NUMBER 117-43		EXPIRATION DATE 11/30/73	
NAME PROCK, MICHAEL			
125 MT HOPE PL BRONX, NY			
EXPIRATION DATE JAN 02 1974			
324 DEPARTMENT OF MOTOR VEHICLES			

BOARD OF ELECTIONS IN THE CITY OF NEW YORK	
BRONX COUNTY	SERIAL No 2365962
NAME <i>Michael Prock</i>	
ADDRESS <i>125 Mount Hope Place</i>	
REGISTERED ON <i>6-17</i>	1971
IN THE <i>24</i> E.D.	<i>81</i> A.D.
MAURICE J. O'ROURKE J. J. DUDERSTEIN GUMERSINDO MARTINEZ WILLIAM F. LARKIN COMMISSIONERS OF ELECTIONS	BY <i>John Severi</i> INSPECTOR OF ELECTION
LINE 144-(70)	

DEPARTMENT OF JUSTICE
UNITED STATES MARSHAL
BURLINGTON, VERMONT 05401

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

FEB 19 1973



RETURN RECEIPT REQUESTED

44



POSTAGE AND FEES PAID
U. S.
DEPARTMENT OF JUSTICE



JUS 451

Unch.
Ad.
Int.
No.
No S.
Do not return to the sender

RETURNED TO SENDER

Michael Proctor
125 Mt Hope Place
Bronx, New York

UNDELIVERABLE DURING DELIVERY TO:
NOTICE LEFT

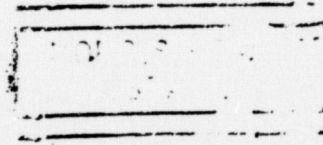
JAN 27 1973

MAR 7 1973

RECEIVED

FEB 20 7 44 AM '73

U.S. MARSHAL
DISTRICT OF VERMONT

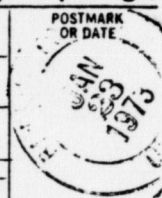




No. 644118

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO <i>Michael Proca</i>									
STREET AND NO. <i>125 Mt. Hope Place</i>									
P.O., STATE AND ZIP CODE <i>Brook, N.Y.</i>									
OPTIONAL SERVICES FOR ADDITIONAL FEES									
RETURN RECEIPT SERVICES	<table><tr><td>1. Shows to whom and date delivered</td><td>15¢</td></tr><tr><td>With delivery to addressee only</td><td>65¢</td></tr><tr><td>2. Shows to whom, date and where delivered</td><td>35¢</td></tr><tr><td>With delivery to addressee only</td><td>85¢</td></tr></table>	1. Shows to whom and date delivered	15¢	With delivery to addressee only	65¢	2. Shows to whom, date and where delivered	35¢	With delivery to addressee only	85¢
1. Shows to whom and date delivered	15¢								
With delivery to addressee only	65¢								
2. Shows to whom, date and where delivered	35¢								
With delivery to addressee only	85¢								
DELIVER TO ADDRESSEE ONLY 50¢									
SPECIAL DELIVERY (extra fee required)									



PS Form 3800 NO INSURANCE COVERAGE PROVIDED— (See other side)
Nov. 1971 NOT FOR INTERNATIONAL MAIL * GPO: 1970 O-397-488

United States District Court
FOR THE

JAN 23 10 09 AM '73
U.S. MARSHAL
DISTRICT OF VERMONT



DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

MICHAEL PROCAK

Criminal
No. 6870

To Mr. Michael Procak, 125 Mt. Hope Place, Bronx, New York
OR 7830 Mountain Sights, Montreal, Quebec, Canada

You are hereby summoned to appear before the United States District Court for the
District of Vermont at the United States Courtroom in the city of
Burlington on the 29th day of January 1973 at 11:00 o'clock A. M. to answer to
an Indictment charging you with violation of Section 545, Title 18, of
the United States Code, as set forth in the attested copy of the Indict-
ment attached hereto and made a part hereof.

Dated: January 22, 1973

Edward J. Trudell
Clerk.
By _____ Deputy Clerk.

RETURN

A True Copy, Attest
CHRISTIAN HANSEN, JR.
U. S. MARSHAL
by *Christian Hansen, Jr.*
Deputy U. S. MARSHAL

This summons was received by me at

on

Defendant.

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

MICHAEL PROCAK

Section 545, Title 18
United States Code

COUNT I

The Grand Jury charges:

On or about the 29th day of November, 1972, at or near St. Albans, in the State and Judicial District of Vermont, MICHAEL PROCAK knowingly and wilfully and with intent to defraud the United States, did smuggle and clandestinely introduce into the United States merchandise, to wit, approximately 2,000 capsules of methaqualone, which should have been invoiced; in violation of Section 545, Title 18, United States Code.

A TRUE BILL

Charles H. Senechal
Foreman

GEORGE W. F. COOK
United States Attorney

By Norman Cohen
NORMAN COHEN
Assistant U. S. Attorney

Endorsed: A true bill, CHARLES H. SENECHAL, Foreman

Further endorsed: Filed in open court this 7th day
of December, A.D., 1972.
KEITH L. SYLVESTER, Deputy Clerk

ATTEST:

EDWARD J. TRUDELL, Clerk

BY:

Christine M. Wilberg
Deputy Clerk

RECEIVED

United States District Court

FOR THE

DISTRICT OF VERMONT

JAN 23 10 08 AM '73
U.S. MARSHAL
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

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Criminal
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Dated: January 22, 1973

Edward J. Trudell
Clerk.

By _____
Deputy Clerk.

RETURN

This summons was received by me at _____ on _____

Defendant.

Please sign & return in enclosed envelope.

DEPARTMENT OF JUSTICE

UNITED STATES MARSHAL
BURLINGTON, VERMONT 05401

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE \$300

POSTAGE AND FEES PAID

U. S.

DEPARTMENT OF JUSTICE



JUS 431

U. S. MARSHAL
BOX 946
BURLINGTON, VT. 05401

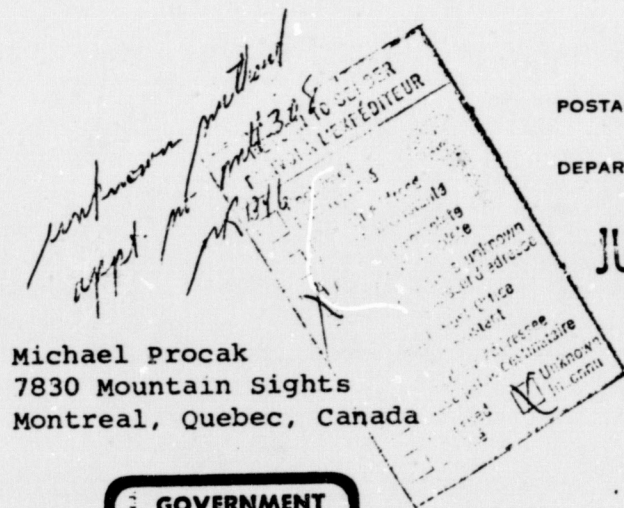
DEPARTMENT OF JUSTICE
UNITED STATES MARSHAL
BURLINGTON, VERMONT 05401

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300



RETURN RECEIPT REQUESTED

JAN 26 1973
44



Michael Procak
7830 Mountain Sights
Montreal, Quebec, Canada



POSTAGE AND FEES PAID
U. S.
DEPARTMENT OF JUSTICE



JUS 431



REGISTERED NO.

172-76

POSTMARK OF

Value \$

Special Delivery \$

Reg. Fee \$

Return Receipt \$

Handling Charge \$

Restricted Delivery \$

Postage \$

☐ AIRMAIL

POSTMASTER (By)

FROM

DEPT OF JUSTICE

P.O. BOX

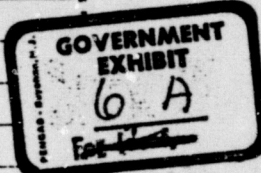
05401

TO

MICHAEL PROCTOR

7830 MTN SIGNS

MONT. P.O. CANYON



United States District Court
FOR THE
DISTRICT OF VERMONT

RECEIVED

JAN 23 10 09 AM '73

U.S. MARSHAL
DISTRICT OF VERMONTGOVERNMENT
EXHIBIT

6 B

For filing

UNITED STATES OF AMERICA

v.

MICHAEL PROCAK

Criminal
No. 6870

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Dated: January 22, 1973

By Edward J. Trudell Clerk.
Deputy Clerk.

RETURN

This summons was received by me at

A True Copy, Attest
CHRISTINA HANSEN, JR.
U. S. MARSHAL
on Christina Hansen, Jr.
Deputy U. S. MARSHAL

Defendant.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

MICHAEL PROCAK

Section 545, Title 18
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Charles H. Senechal
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By Norman Cohen
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Endorsed: A true bill, CHARLES H. SENECHAL, Foreman

Further endorsed: Filed in open court this 7th day
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KEITH L. SYLVESTER, Deputy Clerk

ALLIED:
EDWARD J. TRUDELL, Clerk
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Deputy Clerk

United States District Court

FOR THE

DISTRICT OF VERMONT

RECEIVED

JAN 23 10 09 AM '73

U.S. MARSHAL
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

MICHAEL PROCAK

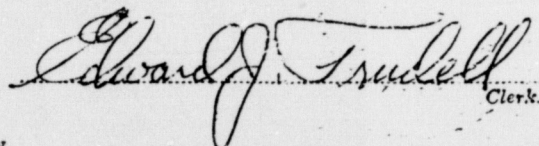
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Dated: January 22, 1973

By


Clerk.

Deputy Clerk.

RETURN

This summons was received by me at

on

Defendant.

case sign and return in enclosed envelope.

DEPARTMENT OF JUSTICE

UNITED STATES MARSHAL
BURLINGTON, VERMONT 05401

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE \$300

U.S. MARSHAL
BOX 946
BURLINGTON, VT. 05401

POSTAGE AND FEES PAID

U. S.

DEPARTMENT OF JUSTICE

JUS 431



RECEIVED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States of America :
 :
 v. : Criminal No. 6870
 :
 Michael Procak :

United States of America :
 :
 v. : Criminal No. 74-100
 :
 Samuel Donald Knight :
 a/k/a Michael Procak :
 a/k/a Donald C. Parker :

OPINION AND ORDER

On November 29, 1972, one Michael Procak was arrested in St. Albans, Vermont, after a routine border search. On November 30, 1972 he was brought before the United States Magistrate on a complaint for violation of 18 U.S.C. § 545 filed by Neil L. Lageman, a Special Agent of the U.S. Customs. He was released on his own recognizance, signing the order specifying the methods and conditions of release (Bail Reform Act Form No. 2) as M. Procak. The order specified, inter alia, that Procak would appear at all scheduled hearings as required and he was to "inform the United States Attorney or his agent of his address at all times so that he may respond to summons." The order further ordered his appearance before the United States Magistrate or Court at the Federal Building in Burlington, Vermont, on December 8, 1972. Michael Procak's correct name was Samuel Donald Knight. He gave his proper Montreal address and telephone number on the release form but the wrong name. He

did not read the form but destroyed it so that it would not be in his possession when he crossed the border into Canada following his release by the Magistrate.

The defendant did not appear before the Magistrate on December 8, 1972 as ordered. This may have been because he was unaware of the hearing having destroyed the order, although it is difficult to conceive that he would not have also been informed of the date and time orally by the Magistrate prior to his release. On December 7, 1972, the Grand Jury returned an indictment against Michael Procak, charging him with violating 18 U.S.C. § 545. An arraignment was scheduled for January 29, 1973 and a summons for that date was mailed to Procak at his Montreal address by the United States Marshal on January 23, 1973 by registered mail. The registered envelope containing the summons was returned from Montreal with a notation of unknown prior to the scheduled arraignment.^{2/} The defendant failed to appear as scheduled on January 29, 1973 and a bench warrant was issued by this court on February 6, 1973. On December 2, 1974, the defendant was apprehended in Florida. At that time he was using the name of Donald C. Parker.

The defendant has filed and argued several pretrial motions which have been determined with one exception, which we now decide. The motion under consideration herein is one to dismiss the indictment based upon a claimed denial of the defendant's sixth amendment right to a speedy trial and a claimed violation of the Second Circuit's Plan for Achieving Prompt Disposition of Criminal Cases. It is the defendant's contention that subsequent to his apprehension on November 30,

1972 his whereabouts were known or should have been known to the government and the failure to bring him to trial until the present time has violated his right to a speedy trial, and since the government did not declare its readiness for trial within six months from the date of his arrest, the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases were also violated. The government does not contest that it did not declare its readiness for trial until it formally filed a notice of readiness on January 27, 1975, but it contends that the time in which to declare its readiness for trial was extended by the Second Circuit Rules^{3/} for the period of time that the government claims the defendant was absent or unavailable.

With respect to defendant's sixth amendment claim we find at the time of defendant's arrest in November, 1972 he volunteered to cooperate with the government in providing information about drug trafficking in Montreal and New York City. In this connection he did have some contact with Neil Lageman, an agent of the United States Drug Enforcement Administration and a United States Agent in Montreal named Sid Bowers. The evidence was in sharp conflict as to the frequency or extent of any meetings or conversations but it appears highly unlikely that these agents knew the defendant's whereabouts at any time after the early part of January, 1973. Furthermore, although the defendant would have us infer otherwise, there was clearly no arrangement or bargain whereby these agents or anyone else excused the defendant from his requirement to appear to answer the charge contained in the indictment. It is true that the defendant never

received the summons to appear for his arraignment, but he did acknowledge the methods and conditions of his release, and one of these conditions was that he next appear on December 8, 1972. Furthermore, the reason the summons never reached him was that he had given the Magistrate a false name. We note further that the defendant took no action to assert his right to a speedy trial until his apprehension in December, 1974. Although this fact does not preclude the defendant from raising the speedy trial issue, it is a factor to be considered in determining whether or not his rights under the sixth amendment have been violated. See Barker v. Wingo, 407 U.S. 514, 528 (1972).

The Barker case establishes that in deciding a sixth amendment speedy trial issue the court should balance (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right and (4) prejudice to the defendant. 407 U.S. at 530. In examining these factors, neither the length of the delay nor the possible prejudice to the defendant is sufficient to overcome the inescapable fact that the defendant himself was the primary cause for the delay. It is well established that "[t]he Sixth Amendment prohibits only an unreasonable delay and a defendant cannot exploit a delay which is attributable primarily to his own acts" United States v. Lustman, 258 F.2d 475, 477 (2d Cir. 1958).

With respect to the Prompt Disposition Rules a slightly different approach to the speedy trial issue must be taken. Instead of the sixth amendment balancing test the Rules simply require that the prosecution be ready for trial

within six months. This approach is a reflection of the fact that the earlier rules of the Second Circuit and the present rules of this District are designed primarily to meet the strong public interest in the efficient administration of justice rather than to provide defendants with additional procedural safeguards. See United States v. Lasker, 481 F.2d 229, 233 (2d Cir. 1973), cert. denied 415 U.S. 975 (1974), United States v. Flores, 501 F.2d 1356, 1360 n.4 (2d Cir. 1974). The burden of proof is on the government to establish that the six month period in which it is required to be ready for trial has been tolled by operation of Rule 5 which provides

In computing the time within which the government should be ready for trial under Rules 3 and 4, the following periods should be excluded:

* * *

- (d) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever his location is unknown. A defendant should be considered unavailable whenever his location is known but his presence for trial cannot be obtained by due diligence.

We hold that the government has sustained its burden in this regard and find the defendant to have been a fugitive whose absence resulted in a delay which tolled the six month readiness provision pursuant to Rule 5(d) in that his location was unknown.

The defendant has demonstrated a propensity for using false names and indeed was using an alias on both occasions on which he was arrested in connection with this case. He either willfully violated or ignored the acknowledged conditions of his release, and there is no credible evidence

to rebut the government's proof that it lost contact with the defendant sufficiently soon after his arrest so that the six months trial readiness period was tolled and had not run by the time the government announced its readiness for trial at the time it filed its formal notice to that effect on January 28, 1975.

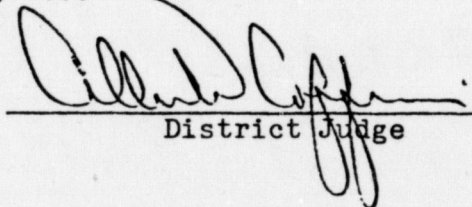
There was a conflict in the testimony of the defendant and Agent Lageman as to the length of time they were in contact with each other following the defendant's arrest. The defendant, who testified he moved to Toronto in February, stated he was in contact with Lageman until he moved. However, Lageman testified his last contact with the defendant was during the second week^{4/} in January. We do not consider it necessary to resolve this conflict as it is clear from the record that at the time scheduled for arraignment on January 29, 1973 the Assistant United States Attorney only knew of the defendant by the false name of Michael Procak and the summons had been returned from Montreal with a notation that the addressee was unknown. It was reasonable for the government to assume by these circumstances that the absence of the defendant at the arraignment was because he had become a fugitive. Although a somewhat greater effort might have been made by the United States Attorney's office to verify the fugitive status of the defendant following his failure to appear for arraignment, the Court holds that when the defendant failed to give his correct name upon his apprehension he put in motion circumstances which misled the prosecution and from which it could properly conclude he was a fugitive when the summons

was returned unserved and he failed to appear at the time scheduled for the arraignment. We consider these facts to be sufficient to provide a reasonable assumption of the defendant's absence on which the prosecution could rely until alerted in some manner that such reliance was misplaced. Under the circumstances of this matter we do not find it unreasonable that the prosecuting arm of the government may not have known that Procak may have been "cooperating" with another arm but even if it was unreasonable not to know this, the evidence clearly establishes that contact was lost by the agents no later than three months from the date of arrest in any event.

Subject to possible revision and amendment upon examination and cross-examination of Agent Sid Bowers at the time of trial, it is ORDERED:

That defendant's motion to dismiss the indictment for lack of a speedy trial and/or violation of the Plan or Rules for Prompt Disposition of Criminal Cases is denied.

Dated at Burlington in the District of Vermont, this 11th day of February, 1975.


District Judge

FOOTNOTES

- 1/ The summons was also mailed to a New York City address furnished by the defendant. However, in view of defendant's testimony that he returned and remained in Montreal following his arrest and there being no claim of any sort with respect to the New York City address we disregard it as irrelevant.
- 2/ Testimony adduced at the hearing on defendant's motion did not establish this fact. However, Deputy United States Marshal Harry McDonald so stated at the time of the scheduled arraignment on January 29, 1973. Although his statement was not under oath the circumstances under which it was made were such that we do not question its veracity.
- 3/ There is some question about which set of prompt disposition rules applies to the disposition of this case. The defendant was first arrested in November, 1972, when the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases [1971 Rules] were in effect. On April 1, 1973 these rules were replaced by this District's Plan for Achieving Prompt Disposition of Criminal Cases. The defendant was arrested when the 1971 Rules were in effect, but the speedy trial issue was not raised until well after the 1973 Plan had been adopted. Both sets of Rules provide that the government must be ready for trial within six months of the date of arrest, service of summons, detention or the filing of a complaint or formal charge, whichever is earlier. In computing the time in which the government should be ready for trial, both sets of Rules prescribe certain identical "excluded periods" which toll the six month period. The only relevant difference between the two sets of Rules relates to the directive given the trial courts in the event a violation of the six month rule is found. Under the 1971 Rules the Court is directed to dismiss the charge, without reference to whether such dismissal should be with or without prejudice. The case of Hilbert v. Dooling, 476 F.2d 355 (2d Cir.), cert. denied, 414 U.S. 878 (1973) established that dismissals under the Rules are to be with prejudice. The 1973 Plan follows Hilbert and specifically provides that dismissals are with prejudice. But it also gives the trial court somewhat more latitude than the 1971 Rules in that it provides that if the government has not complied with the Plan "the court shall enter an order dismissing the indictment with prejudice, unless the court finds that the government's neglect is excusable, in which event the dismissal shall not be effective if the government is ready to proceed to trial within ten days." (emphasis added).
- 4/ Agent Sid Bowers did not testify at the hearing although it is clear that the defendant had some contact with him prior to the time he left for Toronto in February. The Assistant United States Attorney represented to the Court at the hearing on the motion that Agent Bowers would testify

to only a most minimal contact with the defendant. In the interest of economy the court deferred Agent Bowers testimony relative to the motion until the time of trial. For purposes of this opinion the court accepts the representation of the Assistant United States Attorney as true. The Court will, of course, revise this opinion and amend its order, including the granting of the motion, in any way that might be appropriate should the testimony of Agent Bowers when received so indicate.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CLERK
29 PM '75
CT COURT
FV
VERMONT

United States of America :
: :
v. : Criminal No. 6870
: :
Michael Procak :

United States of America :
: :
v. : Criminal No. 74-100
: :
Samuel Donald Knight a/k/a :
Michael Procak, a/k/a :
Donald C. Parker :

OPINION AND ORDER

The defendant's Motion to Revise and Amend the Court's Opinion and Order of February 11, 1975, came on for hearing on June 16, 1975.

Based upon all of the evidence before the Court as of the date of the hearing, including that given at the suppression hearing held on January 20, 1975, and at the trial in Criminal File No. 74-101, and in consideration of the memoranda filed on behalf of the parties and the arguments of counsel, the Court found that the defendant was neither absent nor unavailable for trial within the meaning of this Court's Plan for Achieving Prompt Disposition of Criminal Cases effective April 1, 1973, and that consequently the provisions of Rule 5d of said plan tolling its operation were inapplicable. Based thereon, the Court found that the Government was not excused from being ready for trial within the six month period specified by Rule 4 of the Plan and accordingly, from the bench, the Court

granted defendant's Motion to Revise and Amend the Court's Order of February 11, 1975 and dismissed the indictments in Criminal File Nos. 6870 and 74-100 with prejudice.

The following brief opinion is set forth in further support of the Court's ruling.

Samuel Donald Knight, then using the name Michael Procak, was arrested in St. Albans, Vermont, in November of 1972 and charged with a smuggling violation under 18 U.S.C. § 545. This charge was formalized by indictment before the grand jury and became denominated as Criminal File Number 6870. Mr. Knight was released on his own recognizance but failed to appear at the scheduled arraignment and was apprehended approximately two years later in Florida.

The Government by means of a superceding indictment then charged Mr. Knight not only with the smuggling offense but also with two offenses under the drug laws, 21 U.S.C. §§ 841, 952. These charges were contained in Criminal File Number 74-100. The Government also instituted a separate proceeding, Criminal File Number 74-101, charging Mr. Knight with failure to appear in violation of 18 U.S.C. § 3150.

The defendant by pretrial motion then moved to dismiss the indictments in Criminal File Numbers 6870 and 74-100 for lack of speedy trial. The offenses charged in these indictments allegedly took place in November of 1972, and the defendant claimed that a delay of more than two years in bringing him to trial violated both his constitutional rights under the sixth amendment and the Second Circuit's ^{1/} Plan for Achieving Prompt Disposition of Criminal Cases.

The Government responded that neither the sixth amendment nor the speedy trial rules were applicable since the defendant allegedly willfully failed to appear and his whereabouts were unknown. Obviously, if the defendant was in fact a fugitive, he could not later complain of the Government's failure to bring him to trial during the time he was unavailable. The defendant maintained that he never received notice of the scheduled arraignment and that had he known that he was supposed to be in court as scheduled on January 29, 1973, he would have appeared. It is undisputed that the Government attempted to serve notice upon the defendant by sending a registered letter addressed to Michael Procak at the defendant's Montreal address, but that the letter was returned marked "unknown." It appears that the reason this letter never reached the defendant is that it was addressed to Michael Procak which was the false name used by the defendant when he was arrested in 1972.

Nevertheless, the defendant claims that at least some agents of the Government knew him and that he could have been located and given notice. The defendant maintains he was cooperating with both United States and Canadian law enforcement officials and was in reasonably constant contact with them before and for a short time after his scheduled arraignment. Thus the United States Attorney's office could have easily located him through these agents or the agents could have informed the defendant of his scheduled appearance in court proceedings in the United States.

In our Opinion and Order of February 11, 1975, we denied the defendant's motion to dismiss because, on the

basis of the evidence then before the court, we found it "highly unlikely that [any] agents knew the defendant's whereabouts at any time after the early part of January, 1973." Subsequent to that opinion, however, the defendant was tried on the bail jumping charge in Criminal File Number 74-101. At that trial, significantly more evidence was introduced concerning the extent of the defendant's cooperation with the Government and the frequency of the Government's contacts with him, and the jury found the defendant not guilty of willfully failing to appear at a court proceeding.


The defendant then moved the Court to reconsider our earlier decision of his motion to dismiss for lack of speedy trial. It is in light of the new evidence which arose during the bail jumping trial, and specifically the testimony of Agent Lageman that he had met with the defendant on February 4, 1973, some six days after the defendant's scheduled arraignment, that the Court granted the defendant's motion to dismiss the indictments.

As we expressed in our earlier opinion the Court does not believe the defendant to be without fault in this regard, but it is apparent that the Government took little effort to try to ascertain his whereabouts or to give him proper notice of his arraignment. The Government attempted to serve the defendant by registered mail. When that failed, the Government was content to obtain a bench warrant for the defendant's arrest. This was insufficient when at the time of the arraignment various law enforcement officers knew where the defendant was or could have reached him with

little difficulty. This is particularly so where the United States Attorney's office was aware of Agent Lageman's interest in the defendant's case. It is useless to speculate upon whether or not the defendant would have appeared had he received adequate notice of his arraignment. The point is that the Government failed even to attempt to give him that notice.

Our disposition of the case is such that we need not reach defendant's sixth amendment claim.

Dated at Burlington in the District of Vermont,
this 19th day of June, 1975.


District Judge

FOOTNOTE

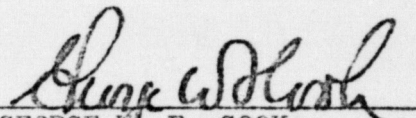
1/ See the discussion in Footnote 3 of the Court's Opinion and Order of February 11, 1975 with respect to whether this matter should be governed by the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases [1971] or this District's Plan for Achieving Prompt Disposition of Criminal cases, effective April 1, 1973. In finding that this District's Plan should apply, the Court further finds that the Government's neglect is not excusable within the meaning of that Plan.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,)	Appellant
v.)	
MICHAEL PROCAK,)	Appellee
UNITED STATES OF AMERICA,)	Appellant
v.)	
SAMUEL DONALD KNIGHT, a/k/a Michael Procak, a/k/a Donald C. Parker,)	Appellee

CERTIFICATE OF SERVICE

I, George W. F. Cook, United States Attorney for the District of Vermont, do hereby certify that I served two copies of the foregoing BRIEF and APPENDIX FOR THE UNITED STATES upon the Appellee by mailing same to his attorney of record, William K. Sessions, III, Esquire, 18 So. Pleasant Street, Middlebury, VT. 05753 this 5th day of September, 1975.


GEORGE W. F. COOK
United States Attorney